

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND,

COMMONWEALTH OF VIRGINIA

At the relation of the

CASE NO. PUE-2002-00174

STATE CORPORATION COMMISSION

Ex Parte: In the matter concerning  
the aggregation of retail electric  
customers under the provisions of the  
Virginia Electric Utility Restructuring Act

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ORDER ADOPTING REVISED REGULATIONS

By Order dated March 18, 2002, the State Corporation Commission ("Commission") initiated this proceeding for the purpose of developing and refining policies, rules, and regulations for the provision of aggregation service.<sup>1</sup> We directed our Staff to conduct an investigation with respect to further refinement of the Commission's rules concerning aggregation, with input from a workgroup comprised of interested parties and stakeholders previously assembled in the Commission's proceeding that developed proposed rules governing retail access to competitive energy services.<sup>2</sup> Additionally, we directed our Staff to file a report on or before August 1, 2002,

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<sup>1</sup> The Order directed the Staff to conduct an investigation concerning the following three topics: (i) licensing of aggregators, (ii) contractual relationships between aggregators and their customers, and (iii) the impact of incumbent electric utilities' relationships with aggregator affiliates on the development of effective competition within the Commonwealth.

<sup>2</sup> Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of establishing rules for retail access, Case No. PUE-2001-00013 (Commission Order adopting rules entered on June 19, 2001).

concerning the results of its investigation, together with any proposed changes to the Commission's Rules Governing Retail Access to Competitive Energy Services ("Retail Access Rules") 20 VAC 5-312-10 et seq.

On August 1, 2002, Staff filed its report ("Staff Report") outlining the issues examined in the course of its investigation along with the sole recommendation that 20 VAC 5-312-20 D of the Retail Access Rules be amended to require licensed suppliers and aggregators to maintain information in their books and records identifying persons or entities with whom they have marketing relationships. Subsequent to the Staff filing its Report, we issued an Order dated September 20, 2002, by which we directed interested parties to file comments in response to Staff's Report. We received comments from three parties.

After having considered the Staff's Report and the comments filed in response thereto, by Order dated November 1, 2002, the Commission directed the publication of Staff's proposed change to 20 VAC 5-312-20 D in the Virginia Register of Regulations and established a procedural schedule to receive comments on Staff's Report. In our November 1, 2002, Order, after considering comments attached to Staff's Report filed by workgroup participants, we also directed Staff to file two reports on or before July 1, 2004. One report would encompass the impact on the development of a competitive market, of incumbent-affiliated

aggregators and their activities in affiliated local distribution companies' service territories. The second report would assess the impact of aggregation contracts (particularly exit fees) on the development of competitive retail markets in the Commonwealth.

In response to our November 1, 2002, Order, we received comments from one party, Dominion Retail Inc. ("Retail"). Retail's comments did not take issue with the adoption of Staff's proposed change to 20 VAC 5-312-20 D. Rather, Retail argued that the two July 1, 2004, reports required of Staff were unnecessary.

NOW THE COMMISSION, upon consideration of the comments filed by workgroup participants, Staff's Report, and comments filed in response thereto, is of the opinion and finds that Staff's proposed changes to 20 VAC 5-312-20 D are reasonable and should be adopted. Further, while Retail's arguments concerning the July 1, 2004, Staff Reports are outside the scope of comments requested by our November 1, 2002, Order, we would simply reiterate that both reports will be beneficial to our assessment of aggregation's impact on the development of a competitive retail generation market.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amendments to 20 VAC 5-312-20 D are adopted as set forth in Attachment A to this Order.

(2) A copy of this Order and the rules attached hereto as Attachment A shall be forwarded promptly for publication in the Virginia Register of Regulations.

(3) This docket shall remain open for the receipt of Staff's Report due on or before July 1, 2004, and for further Orders of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

Chapter 312.

Rules Governing Retail Access to Competitive Energy Services

20 VAC 5-312-20. General provisions.

A. A request for a waiver of any of the provisions in this chapter shall be considered by the State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the State Corporation Commission may impose.

B. The provisions of this chapter may be enforced by the State Corporation Commission by any means authorized under applicable law or regulation. Enforcement actions may include, without limitation, the refusal to issue any license for which application has been made, and the revocation or suspension of any license previously granted. The provisions of this chapter shall not be deemed to preclude a person aggrieved by a violation of these regulations from pursuing any civil relief that may be available under state or federal law, including, without limitation, private actions for damages or other equitable relief.

C. The provisions of this chapter shall not be deemed to prohibit the local distribution company, in emergency situations, from taking actions it is otherwise authorized to take that are necessary to ensure public safety and reliability of the distribution system. The State Corporation Commission, upon a claim of inappropriate action or its own motion, may investigate and take such corrective actions as may be appropriate.

D. The State Corporation Commission maintains the right to inspect the books, papers, records and documents, and to require reports and statements, of a competitive service provider as required to verify qualifications to conduct business within the Commonwealth, to

support affiliate transactions, to investigate allegations of violations of this chapter, or to resolve a complaint filed against a competitive service provider. Every competitive service provider licensed pursuant to this chapter shall establish and maintain records identifying persons or entities performing promotional or marketing activities on behalf of or in conjunction with such competitive service provider.

E. Absent the designation of a default service provider as determined by the State Corporation Commission pursuant to § 56-585 of the Code of Virginia, the local distribution company shall provide, pursuant to the prices, terms, and conditions of its tariffs approved by the State Corporation Commission, service to all customers that do not select a competitive service provider and to customers that chose a competitive service provider but whose service is terminated for any reason.

F. A competitive service provider selling electricity supply service or natural gas supply service, or both, at retail shall:

1. Procure sufficient electric generation and transmission service or sufficient natural gas supply and delivery capability, or both, to serve the requirements of its firm customers.

2. Abide by any applicable regulation or procedure of any institution charged with ensuring the reliability of the electric or natural gas systems, including the State Corporation Commission, the North American Electric Reliability Council, and the Federal Energy Regulatory Commission, or any successor agencies thereto.

3. Comply with any obligations that the State Corporation Commission may impose to ensure access to sufficient availability of capacity.

G. The local distribution company and a competitive service provider shall not:

1. Suggest that the services provided by the local distribution company are of any different quality when competitive energy services are purchased from a particular competitive service provider; or

2. Suggest that the competitive energy services provided by a competitive service provider are being provided by the local distribution company rather than the competitive service provider.

H. The local distribution company shall conduct its forecasting, scheduling, balancing, and settlement activities in a nondiscriminatory and reasonably transparent manner.

I. The local distribution company or competitive service provider shall bear the responsibility for metering as provided by legislation and implemented by the State Corporation Commission.

J. The local distribution company and a competitive service provider, shall coordinate their customer communication activities with the State Corporation Commission's statewide consumer education campaign.

K. The local distribution company and a competitive service provider shall adhere to standard practices for exchanging data and information in an electronic medium as specified by the VAEDT and filed with the State Corporation Commission or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission. In the event the parties agree to initially use a means other than those specified by VAEDT or the local distribution company's tariff, then the competitive service provider shall file a plan with the State

Corporation Commission's Division of Economics and Finance to implement VAEDT or tariff approved standards within 180 days of the initial retail offering.

L. The local distribution company and a competitive service provider that is responsible for exchanging customer information electronically with such local distribution company shall, except as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission, successfully complete EDI testing and receive certification for all EDI transactions, as outlined in the VAEDT EDI Test Plan, prior to actively enrolling customers, except as permitted by subsection K of this section.

M. A competitive service provider offering billing service that requires the direct delivery of a bill to a customer and that requires the electronic exchange of data with the local distribution company shall furnish, prior to enrolling the customer, a sample bill produced from the data exchanged in the EDI certification process, or comparable electronic data exchange process, as described in subsection L of this section, or a sample bill produced similarly elsewhere, to the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance.

N. The local distribution company shall file with the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance a monthly report which shall, at a minimum, include all cancellation requests alleging a customer was enrolled without authorization. Such reports shall include: (i) the approximate date of the enrollment; (ii) the identity of the competitive service provider involved; (iii) the name and address of the customer that cancelled such enrollment; and (iv) if readily available, a brief statement regarding the customer's explanation for the cancellation. Such reports shall be reviewed by commission staff

and regarded as confidential unless and until the State Corporation Commission orders otherwise.

O. The local distribution company shall file with the State Corporation Commission's Division of Economics and Finance a quarterly report providing a detailed breakdown of residential and nonresidential customer switching activity. Such reports shall include, for the local distribution company, the total number of customers and corresponding amount of load eligible to switch; and, for each competitive service provider, the total number of customers and corresponding amount of load served. The amount of load shall be measured in MW or dekatherm capacity of peak load contribution and in kWh or therms of associated energy. Such reports shall be reviewed by commission staff and information specific to individual competitive service providers shall be regarded as confidential unless and until the State Corporation Commission orders otherwise.

P. By March 31 of each year, the provider of electricity supply service shall report to its customers and file a report with the State Corporation Commission stating to the extent feasible, fuel mix and emissions data for the prior calendar year. If such data is unavailable, the provider of electricity supply service shall file a report with the State Corporation Commission stating why it is not feasible to submit any portion of such data.

Q. A competitive service provider shall file a report with the State Corporation Commission by March 31 of each year to update all information required in the original application for licensure. A \$100 administrative fee payable to the State Corporation Commission shall accompany this report.

R. A competitive service provider shall inform the State Corporation Commission within 30 days of the following: (i) any change in its name, address and telephone numbers; (ii) any change in information regarding its affiliate status with the local distribution company; (iii) any changes to information provided pursuant to 20 VAC 5-312-40 A 13; and (iv) any changes to information provided pursuant to 20 VAC 5-312-40 A 15.

S. If a filing with the State Corporation Commission, made pursuant to this chapter, contains information that the local distribution company or a competitive service provider claims to be confidential, the filing may be made under seal provided it is accompanied by both a motion for protective order or other confidential treatment and an additional five copies of a redacted version of the filing to be available for public disclosure. Unredacted filings containing the confidential information shall be maintained under seal unless the State Corporation Commission orders otherwise, except that such filings shall be immediately available to the commission staff for internal use at the commission. Filings containing confidential or redacted information shall be so stated on the cover of the filing, and the precise portions of the filing containing such confidential or redacted information, including supporting material, shall be clearly marked within the filing.